

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Advanced Methods to Target and Eliminate ) CG Docket No. 17-59  
Unlawful Robocalls )

**Proposal to Develop  
A Reassigned Number Database**

**Comments by**

**National Consumer Law Center  
on behalf of its low-income clients**

**and**

**Consumer Action  
Consumer Federation of America  
Consumers Union  
National Association of Consumer Advocates  
Public Citizen  
Public Knowledge  
U.S. PIRG**

**August 28, 2017**

## Table of Contents

I.	Summary	1
II.	Introduction	2
III.	Basis for Reassigned Number Database	4
IV	Relevant Principles for Design of a Reassigned Number Database	6
1.	The design should be simple, inexpensive, ubiquitous and transparent	6
2.	All telephone services providers must be required to participate	8
3.	The deactivation date should be the salient information provided	8
4.	The information provided must be timely	9
5.	A short formal grace period may not be inappropriate	10
6.	The database should not be an excuse for reduced compliance with the TCPA	10
7.	A safe harbor would be counterproductive	11
8.	The FCC should enforce compliance with database rules	12

## I. Summary

We strongly support the formation of a reassigned number database. In these comments, we make specific recommendations regarding the salient details of such a database. We recommend that the Commission incorporate a number of principles in its implementation, including requiring that all providers of telephone service participate; that information be reported on a timely basis to the database; and that the calling industry should be responsible for bearing the costs of the database. We encourage the Commission to ensure incentives for compliance with the Telephone Consumer Protection Act are built into the structure of the database. We do not dispute that a short and finite grace period for users of the database may be appropriate, but we oppose a safe harbor protecting callers from liability simply for using the database.

## II. Introduction

These comments are filed by the **National Consumer Law Center** on behalf of its low-income clients and **Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, Public Citizen, Public Knowledge, and U.S. PIRG**. We very much appreciate the leadership provided by the Federal Communications Commission (FCC) to address the problem of unwanted and illegal calls to reassigned telephone numbers.<sup>1</sup> We heartily endorse the ideas proposed in this Notice of Inquiry (NOI), as the successful implementation of a reassigned numbers database will significantly reduce the number of unwanted and illegal robocalls to consumers.

---

<sup>1</sup> In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Second Notice of Inquiry, FCC 17-90, CG Docket No. 17-59 (Rel. July 13, 2017) [hereinafter Second Notice of Inquiry], *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-90A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-90A1.pdf).

“If robocalls were a disease, they would be an epidemic.”<sup>2</sup> As the FCC has recognized by initiating this NOI, robocalls are a huge invasion of privacy to consumers. Indeed the problem of unwanted and harassing robocalls is growing worse. Americans received 2.59 billion robocalls in July, which is a 7.5 percent increase over July 2016 and 3 percent more than in June. In fact one recent analysis found that 17.2 billion robocalls were made during the first seven months of 2017.<sup>3</sup>

Understandably, robocalls are the leading cause of complaints to the FCC,<sup>4</sup> triggering over 165,000 in 2016 alone.<sup>5</sup> Moreover, in 2016 there were over five million complaints about robocalls filed with the Federal Trade Commission,<sup>6</sup> increasing from over three and one half million the previous year.<sup>7</sup>

---

<sup>2</sup> *Rage Against Robocalls*, Consumer Reports (July 28, 2015) [hereinafter *Rage Against Robocalls*], available at <http://www.consumerreports.org/cro/magazine/2015/07/rage-against-robocalls/index.htm>.

<sup>3</sup> CDG, *Robocall Research: Calls Rising, Texas Worst Hit*, Aug. 14, 2017 available at <https://cdgportal.com/blog/index.php/2017/08/14/robocall-research-calls-rising-texas-worst-hit/>.

<sup>4</sup> See Federal Communications Commission Encyclopedia, Quarterly Reports-Consumer Inquiries and Complaints, Top Complaint Subjects, <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints> (last visited Aug. 24, 2017).

<sup>5</sup> See Federal Communications Commission, Consumer Complaint Data Center, Quarterly Reports-Consumer Inquiries and Complaints, Consumer Complaint Data – Unwanted Calls, <https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Aug. 24, 2017).

<sup>6</sup> See Federal Trade Commission, National Do Not Call Registry Data Book for Fiscal Year 2016 (Dec. 2016), available at [https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc\\_data\\_book\\_fy\\_2016\\_post.pdf](https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf).

<sup>7</sup> See Federal Trade Commission, National Do Not Call Registry Data Book for Fiscal Year 2015 (Dec. 2015), available at <https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2015/dncdatabookfy2015.pdf>.

Congress passed the Telephone Consumer Protection Act<sup>8</sup> (TCPA) in 1991 in direct response to “[v]oluminous consumer complaints about abuses of telephone technology—for example, computerized calls dispatched to private homes.”<sup>9</sup> Yet 25 years later, these invasions of privacy are still increasing. Indeed, some estimate that 35 percent of all calls placed in the U.S. are robocalls.<sup>10</sup>

The TCPA is an essential privacy protection law, intended to protect consumers from the intrusions of unwanted automated and prerecorded calls to cell phones. Other than the exception created in the Budget Act in October 2015,<sup>11</sup> the TCPA permits these calls *only if* the consumer has given “prior express consent” to receive them or if the call is made for emergency purposes.<sup>12</sup>

However, because over 35 million telephone numbers are disconnected each year,<sup>13</sup> and tens of thousands are reassigned each month,<sup>14</sup> robocallers are continually reaching cell phones owned by consumers who have not provided consent for those calls. This leads to

---

<sup>8</sup> 47 U.S.C. § 227.

<sup>9</sup> *Mims v. Arrow Fin. Servs., L.L.C.*, 565 U.S. 368, 370 (2012).

<sup>10</sup> *See Rage Against Robocalls*.

<sup>11</sup> Congress amended the TCPA in 2015 to allow calls to be made without consent to collect a debt owed to or guaranteed by the United States, subject to regulations issued by the FCC. Pub. L. No. 114-74, 129 Stat. 584 (2015) (§ 301). As the rules allowing the calls to be made pursuant to this amendment are not yet in effect, no robocalls can be made without consent to cell phones, unless the call is made for emergency purposes. In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, FCC 16-99 ¶ 60, CG Docket No. 02-278, (Rel. Aug. 11, 2016) (emphasis added), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-99A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-99A1.pdf).

<sup>12</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>13</sup> *See* Second Notice of Inquiry at ¶ 5 n.14 (citing North American Numbering Plan Administrator Number Resource Utilization/Forecast Reports (average of aggregate numbers for the time period January 1, 2013 through December 31, 2016)).

<sup>14</sup> Joint Brief for Petitioners ACA International et al. for Review from the Federal Communications Commission’s TCPA 2015 Declaratory Ruling and Order, at 17 (D.C. Cir. filed Nov. 25, 2015).

tens of millions of unwanted calls, thousands of complaints to government agencies, and much litigation having to be filed against the robocallers.<sup>15</sup>

Both legitimate callers and bad actors can discharge tens of millions of robocalls over the course of a day at a penny or less per call.<sup>16</sup> Robocalls are so inexpensive to make that it is often easier to make wrong-number robocalls than it is to ensure that the caller has the requisite consent for the call.

The TCPA is a critical protection against these unwanted phone calls, because it provides a financial counterbalance to the cheap robocalls. Ensuring that callers who make wrong-number calls have financial consequences for such calls creates the incentive for these callers to engage in methodologies—like employing a reassigned number database—that will allow them to avoid the consequences of violating the TCPA.

### **III. Basis for Reassigned Number Database**

Our interest is in protecting consumers from unwanted and illegal robocalls. For several years we have been recommending that the FCC require participating in a reassigned number database.<sup>17</sup> A fully effective database, along with a fully enforced TCPA, will indeed stop many of these unwanted and illegal calls.

---

<sup>15</sup> Calls to reassigned numbers are, of course, only one of the reasons for TCPA litigation. Other typical problems leading to TCPA cases are calls and texts made without consent or after consent has been revoked. *See* National Consumer Law Center, Federal Deception Law §§ 6.3.4, 6.4.3, 6.7.2 (3d ed. 2017).

<sup>16</sup> *See, e.g.*, Robodial, Instant Price Quote Calculator, *available at* <http://www.robodial.org/instantpricequote/>; Voicelogic, Voicecasting-Ringless Voicemail Broadcast, *available at* [http://voicelogic.com/voicecasting/?gclid=cj0kcqjw8vnmbrdgarisacm\\_bhl2zs\\_o5kv35bs92clsfphwvpgplpgvw7ugn5-75z4gr4amh0mkwqnkaankuealw\\_wcb](http://voicelogic.com/voicecasting/?gclid=cj0kcqjw8vnmbrdgarisacm_bhl2zs_o5kv35bs92clsfphwvpgplpgvw7ugn5-75z4gr4amh0mkwqnkaankuealw_wcb).

<sup>17</sup> *See, e.g.*, Reply Comments submitted by National Consumer Law Center on Budget Act rules, June 21, 2016, *available at* <https://ecfsapi.fcc.gov/file/10622234478653/NCLC%20Reply%20Comments.pdf>; *Ex Parte*

But it should be recognized that even if it is 100% reliable, a database will not be a panacea. Alone, a perfect database will not stop all these calls. We know this because there have been many cases against robocallers for not just calling the wrong number, but for continuing to call the wrong number *even after* being notified that the number was wrong. The recently settled case of *Johnson v. Navient Solutions LLC, Inc.* is an example of this dynamic.<sup>18</sup> In that case, Navient paid over \$17 million to settle a class action case alleging that it had *continued to call over 350,000* cell phone owners repeatedly, even after it had noted in its own records that the numbers were wrong.<sup>19</sup>

In its 2015 Omnibus Order, the FCC allowed callers only one call to determine whether a cell phone number had been reassigned to a new consumer.<sup>20</sup> It did this because if a strict limit were not placed on these calls, callers would have no incentive to ensure that they are calling the person who provided consent to be called. Wrong-number calls are often

---

letter from Margot Saunders detailing meetings with the Consumer and Governmental Affairs Bureau and Office of General Counsel, December 18, 2014; *available at* <https://ecfsapi.fcc.gov/file/10622234478653/NCLC%20Reply%20Comments.pdf>; Margot Saunders on behalf of the National Consumer Law Center et al., Testimony Before the Senate Committee on Commerce, Science & Transportation 23 (May 18, 2016), *available at* [https://www.commerce.senate.gov/public/\\_cache/files/c80ec902-c005-4121-97b3-b5a12a8b87b8/F301D6B6AE8DDF2E2A761DE9CEF08DB7.margot-saunders-testimony.pdf](https://www.commerce.senate.gov/public/_cache/files/c80ec902-c005-4121-97b3-b5a12a8b87b8/F301D6B6AE8DDF2E2A761DE9CEF08DB7.margot-saunders-testimony.pdf).

<sup>18</sup> The court granted final approval of the settlement in this matter on July 13, 2017. Final Approval Order, *Johnson v. Navient Solutions, Inc.*, Case No. 1:15-cv-00071-LJM-MJD and *Toure v. Navient Solutions*, Case No. 1:17-cv-00071-LJM-TAB (S.D. Ind. filed July 13, 2017), *available at* [https://johnsoncpasettlement.com/Portals/0/Documents/\(177\)%20Final%20approval%20Order.pdf](https://johnsoncpasettlement.com/Portals/0/Documents/(177)%20Final%20approval%20Order.pdf).

<sup>19</sup> Settlement Agreement and Release at ¶¶ 28, 29, *Johnson v. Navient Solutions, Inc.*, Case No. 1:15-cv-00071-LJM-MJD and *Toure v. Navient Solutions*, Case No. 1:17-cv-00071-LJM-TAB (S.D. Ind. filed Dec. 23, 2016), *available at* <https://johnsoncpasettlement.com/Portals/0/Documents/Settlement%20Agreement%20and%20Release1.pdf>.

<sup>20</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 8006-10 ¶¶ 85-92, CG Docket No. 02-278, (2015).

not just a matter of one or two calls, but involve many repeated calls. A few additional examples of multiple wrong-number calls include:

- *McCaskill v. Navient Solutions, Inc.* (727 calls)<sup>21</sup>;
- *Williams v. Navient Solutions, Inc.* (100 calls)<sup>22</sup>;
- *Moore v. Dish Network L.L.C.* (31 calls)<sup>23</sup>;
- *Scott v. Reliant Energy Retail Holdings, L.L.C.* (at least 100 calls)<sup>24</sup>;
- *Singh v. Titan Fitness Holdings, L.L.C. d/b/a Fitness Connection* (200 calls)<sup>25</sup>;
- *Pecora v. Santander* (50 calls).<sup>26</sup>

Although callers maintain that they do not benefit from making wrong-number calls (because, they say, they are not reaching the party they are intending to call), experience has demonstrated that without proper incentives, too many callers see no reason to go to the trouble of maintaining and updating their records to make sure they are robocalling only those consumers who have provided consent. Ensuring vigorous enforcement of the TCPA provides those incentives. The TCPA properly places the burden of proving consent on the caller. This burden should remain on the caller to ensure that the consent remains valid. The experience reflected in the cases shows that, without proper incentives to stop making wrong-number calls, callers will simply keep calling.

#### **IV. Relevant Principles for Design of a Reassigned Number Database**

1. **The design should be simple, inexpensive, ubiquitous and transparent.** As the FCC designs the reassigned number database, it should ensure that it is building a

---

<sup>21</sup> 178 F. Supp. 3d 1281 (M.D. Fla. 2016).

<sup>22</sup> Case No. 3:16-cv-01273 (M.D. Fla. filed Oct. 15, 2016).

<sup>23</sup> 57 F. Supp. 3d 639 (N.D. W. Va. 2014).

<sup>24</sup> Case No. 4:15-cv-00282 (S.D. Tex filed Feb. 2, 2015).

<sup>25</sup> Case No. 4:14-cv-03141 (S.D. Tex filed Nov. 4, 2014).

<sup>26</sup> Case No. 5:14-cv-04751 (N.D. Cal. filed Oct. 27, 2014).



program that will be useful to callers to avoid calling wrong numbers, but that will also not add undue burden to telephone service providers. Extra burden on the providers would add to the costs for these providers, which costs would ultimately be borne by telephone service subscribers. Any additional costs for telephone service can hurt low-income people significantly.

Moreover, the rules for the operation of the database should be available to the public, so that everyone can see how it works. And the costs imposed on callers to access the database before making calls should be as low as possible to incentivize the callers to use it, thus reducing unwanted calls to consumers.

The information stored in the database should be kept to an absolute minimum, in order to keep costs down for all involved and avoid creating additional problems. We recommend that only the following information be collected and stored:

- a. The phone number;
- b. The date the number is deactivated;
- c. The telephone service provider reporting the information.

Callers should be provided information only after querying the database about a specific phone number. This provides protection against fraudsters looking for lists of deactivated numbers to use as a source for spoofed numbers. And only the phone number and the date that the number most recently became available should be provided in response to queries. Callers do not need to know which phone company owns a particular phone number.

A design like this will protect the privacy of the consumers whose phone numbers are at issue, as well as the marketplace interests of telephone companies providing the

information, so that the information regarding the numbers at their disposal is not shared with competitors.

2. **All telephone services providers must be required to participate.** There are currently databases that provide information to callers about reassigned numbers.<sup>27</sup> However, some in the industry have complained that these existing databases are not sufficiently reliable,<sup>28</sup> and the FCC has noted that “callers lack guaranteed methods to discover all reassignments immediately after they occur.”<sup>29</sup> It appears that the only way a completely reliable database will be available is if the FCC mandates that all telephone service providers of all telephone services participate in it. Wired line providers, as well as VoIP providers, should be required to participate, as number porting will permit numbers that begin on one kind of service to be used through a different medium. Full protection against robocalling a wireless number will require that all providers, for all types of services, participate in the database.
3. **The deactivation date should be the salient information provided.** The FCC has asked whether the information to be reported should be when a number is disconnected (which may be only temporary), is deactivated (which marks the beginning of the aging process), classified as available, or actually reassigned.<sup>30</sup> Like Goldilocks’ choices, some choices are too early and some choices may be too late. However, there is one choice

---

<sup>27</sup> See, e.g., Neustar, TCPA Compliance, *available at* <https://www.neustar.biz/risk/compliance-solutions/tcpa> (last visited Aug. 24, 2017); Danal, A TCPA Compliance Solution That Uses Authentic Live Data to Minimize Risk Exposure, *available at* <https://tcpaconfidence.com/> (last visited Aug. 24, 2017); Twilio Marketplace, Payfone TCPA Compliance, *available at* <https://www.twilio.com/marketplace/add-ons/payfone-tcpa-compliance> (last visited Aug. 24, 2017).

<sup>28</sup> The FCC, in its Second Notice of Inquiry, cites to some of these statements. See Second Notice of Inquiry at ¶ 6 n.18.

<sup>29</sup> Second Notice of Inquiry at ¶ 6.

<sup>30</sup> Second Notice of Inquiry at ¶ 11.

that appears to be just right.

Disconnection is not a good choice because consumers could, on some occasions, have their old numbers reconnected. On the other hand, the times when the number becomes available or is reassigned numbers both seem too late. A number could be reassigned almost instantaneously after it becomes available. And even if updated information is provided every 24 hours, and accessed on a timely basis by callers, there is a possibility that some wrong-number calls will be made if the number has already been reassigned.

However, reporting when the number has been formally deactivated seems just right. In this situation, the number will not revert to the prior consumer, and because of the aging process, there is likely to be some lag time between the date of deactivation and the date the number is actually reassigned and becomes operational for another consumer anyway.

4. **The information provided must be timely.** In order for callers to be able to rely on the information provided by the database, the information in the database must be up-to-date and accessible almost immediately. We recommend that the database gather information on a daily basis, so that if the caller checks a phone number against the database on any particular day, and is told that it was deactivated since the date the caller obtained consent, the information will be at most one day out of date. Given the aging process that most telephone numbers go through, it is highly unlikely that phone numbers will be deactivated, made available and reassigned all within one 24 hour period. However, to the extent this ever happens, and a robocaller calls the new owner during that window, a grace period would cover those calls.

5. **A short formal grace period may not be inappropriate.** As noted above, if the database provides the date a number has been formally deactivated, in most cases there will be lag time before the number is reassigned, so it will not be possible for a caller that has checked the database to reach the new owner of the number inadvertently. However, there may be instances when deactivated numbers are reassigned immediately. In that case, a very short formal grace period may not be inappropriate.

There is a distinction between a grace period and a safe harbor. A grace period would protect callers against liability only for calls made during the grace period, nothing more, and subject to certain specific conditions. If the Commission adopts a grace period, it should be limited as follows:

- a. To maximize the protections from unwanted calls that will result from the existence of the database, the grace period should be as short as possible, likely no more than 48 hours.
  - b. The grace period should apply *only* when the caller has i) used the database within 24 hours of making the call; ii) the database provided the incorrect information; and iii) no calls were made by the caller to the number after a person answered the phone and informed the caller either that it was reaching the wrong number or that the called party revoked consent.
6. **The database should not be an excuse for reduced compliance with the TCPA.**

The express purpose of the reassigned number database should be to protect consumers from wrong-number calls. It should work in concert with the TCPA to protect consumers from these illegal calls rather than provide a basis to shield callers from legal accountability for making calls that are otherwise illegal under the TCPA. All aspects of the design of the database should be premised on the idea that its usage should incentivize callers to comply with the TCPA and ensure that their calls are made only to consumers who have provided consent.

The TCPA requires that callers maintain records that provide evidence showing they

have the requisite consent to robocall each phone number called.<sup>31</sup> For the database to work properly, it should be expected that callers should have to match the date of consent maintained in their business records with the latest deactivation date provided by the database to determine whether the consent was provided after the last deactivation date. Only if the consent was provided after the deactivation date will the caller know that its record of consent is still valid to match the person the caller wants to reach with that phone number. The Commission should make clear that callers have the burden of producing evidence that they performed this matching process if they claim that they had consent to make a robocall to a number that has been reassigned.

Additionally, the Commission should clarify that calls made to a number within a grace period will still be subject to TCPA liability if the calls are made after the person called informed the caller either that the wrong number was reached, or that consent was revoked. In other words, the grace period should only protect callers for calls made within the grace period that are otherwise not illegal under the FCC's rules implementing the TCPA, so that if the call was made after a valid revocation, or if the caller never had consent, liability under the TCPA would apply.

7. **A safe harbor would be counterproductive.** The calling industry has asked for a safe harbor for callers who check the database for confirmation that the number they have been provided consent to call or text has not been reassigned.<sup>32</sup> Yet, this would be

---

<sup>31</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 8006-10 ¶ 70, CG Docket No. 02-278, (2015) (“We expect that responsible callers, cognizant of their duty to ensure that they have prior express consent under the TCPA and their burden to prove that they have such consent, will maintain proper business records tracking consent.”)

<sup>32</sup> See Hearing on The Telephone Consumer Protection Act at 25: Effects on Consumers and Business Before the United States Senate Committee on Commerce, Science and Transportation 20, 114th Cong., 2d Sess. (May 18, 2016) (statement of Monica Desai,

counterproductive to the purpose of establishing a database – which is to reduce illegal calls. Access to a reliable database provides its own reward to callers: protection from reassigned number litigation. The callers themselves should support the database, and have every incentive to ensure its complete accuracy (and thus support the database with the fees paid for accessing it). If a safe harbor were permitted, it would undermine the incentive for callers to ensure that the database is accurate and reliable.

8. **The FCC should enforce compliance with database rules.** We do not comment on the other questions asked in the Second Notice of Inquiry, because these technical issues are beyond our expertise. However once the database is technically established, one key requirement should be that the FCC should regularly monitor its operations and ensure that all participants--the telephone providers, the database itself, and the callers accessing the database--are complying with the relevant rules and regulations.

We appreciate the FCC's innovative and vigorous approach to dealing with the continuing problem of invasive and annoying robocalls. We are happy to respond to any questions.

Respectfully submitted, this the 28<sup>th</sup> day of August, 2017, by:

---

Margot Saunders  
Senior Counsel  
National Consumer Law Center  
1001 Connecticut Ave, NW  
Washington, D.C. 20036  
202 452 6252, ext. 104  
[msaunders@nclc.org](mailto:msaunders@nclc.org)

---

Partner, Squire, Patton Boggs), *available at*  
[https://www.commerce.senate.gov/public/\\_cache/files/11ba8b7f-dea2-4c81-a515-7e312a50f40f/E74117FDEE42CEBCE9832497DF2AB5CB.monica-desai-testimony.pdf](https://www.commerce.senate.gov/public/_cache/files/11ba8b7f-dea2-4c81-a515-7e312a50f40f/E74117FDEE42CEBCE9832497DF2AB5CB.monica-desai-testimony.pdf).

[www.NCLC.org](http://www.NCLC.org)

on behalf of the low-income clients of the National Consumer Law Center

Consumer Action

Consumer Federation of America

Consumers Union

National Association of Consumer Advocates

Public Citizen

Public Knowledge

U.S. PIRG.